

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

VALICOFF FRUIT CO., INC., a )  
Washington corporation, ) NO. CV-13-3057-LRS  
)  
Plaintiff, ) ORDER RE DEFENDANT'S  
) MOTION FOR PARTIAL SUMMARY  
-vs- ) JUDGMENT (ECF No. 36) AND  
TUFF AUTOMATION, INC., a ) PLAINTIFF'S MOTION TO  
Michigan corporation, ) STRIKE (ECF. No. 50)  
)  
Defendant. )  
)

---

**BEFORE THE COURT** is Defendant Tuff Automation Inc.'s Motion For Partial Summary Judgment (ECF No. 36) and Plaintiff Valicoff Fruit Co.'s Motion to Strike Deposition Testimony (ECF No. 50). Oral argument was held on April 14, 2015 in Yakima, Washington. The Court denied both motions. This order is entered to memorialize and supplement the oral rulings of the court.

/ / /

1       **I. Defendant's Motion (ECF No. 36)**

2              Defendant seeks dismissal of Plaintiff's "revocation  
3 theory." Defendant argues that the evidence is sufficiently  
4 clear that the Court can find as a matter of law that such  
5 theory is untenable. The parties recount different versions  
6 of the alleged revocation and the condition of the goods at  
7 issue in this matter. The Court briefly addresses the  
8 arguments underlying its ruling.

11       **A. Goods Were Not "Nonconforming"**

12              Defendant argues that the subject goods, controlled  
13 atmosphere ("CA") equipment, adequately performed their  
14 intended function at all times. Defendant asserts that the CA  
15 environment was never interrupted and no fruit loss occurred.  
16 Plaintiff, however, adamantly opposes such contention.  
17 Plaintiff argues that whether or not a non-conformity existed,  
18 substantially impairing the value of the goods, cannot be  
19 determined without first sorting out what the contract  
20 required of the parties. Additionally, Plaintiff argues that  
21 all three parts comprising the subject system allegedly had  
22 problems. The Court finds that genuine issues of material  
23 fact exist precluding summary judgment as to whether the CA

1 equipment was in non-conformity and if so, whether such non-  
2 conformity substantially impaired the equipment's value to  
3 Plaintiff. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106  
4 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

5 **B. Plaintiff Created Its Alleged Equipment Problems**

6 Defendant argues that Plaintiff allegedly made numerous  
7 mistakes during installation of the system (which it  
8 contractually agreed to perform), failed to conduct necessary  
9 maintenance, and misused the system as a result. Further,  
10 Defendant denies that it made any warranty(s) or that the  
11 Plaintiff sought any. Plaintiff disagrees and states that a  
12 warranty existed for training, support and start-up.  
13 Plaintiff denies that it caused the alleged problems with the  
14 system. The court finds these are additional issues of  
15 material fact precluding summary judgment.

16 **C. Revocation Did Not Occur Within a Reasonable Time**

17 Defendant argues that 16 months elapsed before Plaintiff  
18 communicated its decision to revoke. Therefore, the purported  
19 revocation did not occur within a reasonable time after the  
20 Plaintiff discovered or should have discovered the ground for  
21 revocation after initial acceptance at delivery. To date,

1 Plaintiff allegedly refuses to let Defendant reclaim the  
2 equipment without paying damages, which Defendant argues is  
3 inconsistent with revocation.  
4

5 Plaintiff states that it is a material fact whether 16  
6 months is an unacceptable delay for revocation under the  
7 totality of circumstances specific to this case. The Court  
8 agrees that whether Plaintiff's revocation notice was brought  
9 within a reasonable time is a question of material fact which  
10 renders partial summary judgment inappropriate.

12 **D. Plaintiff Breached Its Obligation of "Good Faith"**  
13

14 Finally, Defendant asserts that Plaintiff breached its  
15 obligation of good faith. More specifically, Defendant argues  
16 that when Plaintiff requested service work from Defendant,  
17 after contracting to buy substitute parts from one of  
18 Defendant's competitors, this amounted to an absence of good  
19 faith.  
20

21 Plaintiff responds that whether or not it breached a duty  
22 of good faith requires a determination of what Plaintiff's  
23 duties were according to the contract. The contents of the  
24 contract are disputed.  
25

26 ///

1       The Court finds this is an additional issue of material  
2 fact that precludes summary judgment.  
3

4       **II. Plaintiff's Motion to Strike**

5       Plaintiff argues that the deposition testimony submitted  
6 in Defendant's Reply in support of its Motion for Partial  
7 Summary includes six pages of handwritten changes which  
8 contradict the previous testimony Mr. Theile provided under  
9 oath.  
10

11       Defendant responds that the motion to strike should be  
12 denied because clarifications that were made are neither  
13 surprising nor inappropriate, given the fact that the  
14 questions were phrased confusingly causing Mr. Theile to have  
15 to think about it more clearly. Additionally, Defendant  
16 states no tactical advantage occurred and none was attempted.  
17

18       The Court denies the motion to strike as it did not rely  
19 on the changes to the deposition for purposes of the motion  
20 for partial summary judgment.  
21

22       **III. Conclusion**  
23

24       The Court has carefully considered the written and oral  
25 arguments presented by the parties. For the reasons stated on  
26 ///  
27

the record, and supplemented herein, the Court enters this order. Accordingly,

**IT IS ORDERED:**

1. Defendant's Motion For Partial Summary Judgment, ECF  
No. 36, is DENIED.

2. Plaintiff's Motion to Strike, ECF No. 50, is DENIED as MOOT.

The District Court Executive is directed to file this Order and provide copies to counsel.

**DATED** this 20<sup>th</sup> day of April, 2015.

*s/Lonny R. Suko*

LONNY R. SUKO  
SENIOR UNITED STATES DISTRICT JUDGE